

ARCHITECT'S DESIGN LIABILITY

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ABSTRACT

To build a building can be very complex and complicated task. Right from the inception until after the practical completion many things could go wrong. Architect could be held liable for any failure in design regarding to his duty and services provided to the client. The objective of this research is to determine into circumstances in which architects might be liable towards the design during design stage and to look into consequences of architect's design liability regarding to his services and duties. The research has determined twelve circumstances of architect's duty and services which contributed to architect's design liability. His duty and services in design must include everything that covers in contractual agreement. An architect must perform his basic duty and services under Architects (Scale of Minimum Fees) Rules 1986. In performing his duty to the client, architect is subject to Rule 28 Code of Professional Conduct and Rule 29 Conditions of Engagement under Architects Rules 1996 Part IV Code of Professional Conduct and Conditions of Engagement. The research found that architect's failure to perform his duties and services expected by the client will extent the architect's liability to any negligence in design. As a result, architects will be liable for breach of duty to his client. The research found that most of the court will judge the architect's on whether or not he perform his duty of care to his client and the standard of skill and care expected to be performed by the architect. Failure by the architect to meet the standard of skill and care expected which then caused error on building design will render the architect to be liable for pure economic loss, and nuisance in tort. Thus, this research is perhaps would contribute towards enhancement of the architect's knowledge regarding their design liability under construction law.

ABSTRAK

Proses merekabentuk dalam pembinaan bangunan adalah satu tugas yang sukar dan mencabar. Pelbagai masalah akan timbul bermula di peringkat awal reka bentuk sehingga ke peringkat akhir bangunan disiapkan. Malah, arkitek dipertanggungjawabkan ke atas kegagalan dalam melaksanakan tugas kepada pelanggannya yang menyebabkan masalah pada reka bentuk bangunan. Objektif kajian adalah untuk memastikan keadaan dimana arkitek dipertanggungjawabkan dalam reka bentuk bangunan dan kesan yang akan timbul berkaitan tugas oleh arkitek. Analisis menunjukkan bahawa arkitek perlu menjalankan tugas seperti ditetapkan di dalam kontrak. Secara asasnya, tugas-tugas dan tanggungjawab merekabentuk oleh arkitek dinyatakan di dalam *Architects (Scale of Minimum Fees) Rules 1986*. Arkitek perlu melaksanakan tugas kepada pelanggannya seperti yang termaktub pada *Rule 28 Code of Professional Conduct* dan *Rule 29 Conditions of Engagement under Architects Rules 1996 Part IV Code of Professional Conduct and Conditions of Engagement*. Kajian menunjukkan kegagalan arkitek dalam melaksanakan tugas kepada pelanggannya menyebabkan arkitek dipertanggungjawabkan kepada pembatalan tugas. Dalam kes yang melibatkan kecuaiian arkitek, hakim akan menilai sama ada arkitek melaksanakan tugas penjagaan (*duty of care*) kepada pelanggannya serta sama ada arkitek melaksanakan tugasnya sepertimana mengikut kemahiran dan penjagaan semasa (*standard of skill and care*). Kegagalan melaksanakan tugasnya sehingga menyebabkan berlaku masalah kecuaiian rekabentuk menyebabkan arkitek bertanggungjawab kepada kerugian (*pure economic loss*) dan gangguan (*nuisance*). Kajian ini diharapkan dapat membantu meningkatkan kefahaman arkitek berkaitan tanggungjawabnya dalam merekabentuk dibawah undang-undang pembinaan.